

Terms and Conditions: Inclusion360

1. Terms and Conditions

1.1 Application

These Terms and Conditions apply to the provision of the Instrument by Serendis to the Client.

1.2 Acceptance

The Client confirms their acceptance of these Terms and Conditions by using the Instrument.

1.3 Authority to Amend

No person other than a director of Serendis has authority to amend, vary or waive these Terms and Conditions on behalf of Serendis.

1.4 Interpretation

Capitalised terms used in these Terms and Conditions have the meaning given in clause 13 unless the context otherwise requires.

2. Supply of Instrument

The Client agrees to accept, and Serendis agrees to provide, the Instrument, subject to these Terms and Conditions.

3. Payment

- (a) The Instrument is a pay-per-user service.
- (b) The Client will not have access to the Instrument until the Organisation has made payment of the Fee in full to Serendis, or has agreed to make payment in full, in accordance with the Serendis Payment Terms.

4. Course Instrument

- (a) Payment of the Fee by the Organisation entitles the Client to access the Instrument by way of the Access Code.
- (b) The results of the Client's use of the Instrument will be made available to the Client during the Coaching Session.

- (c) The Client is responsible for ensuring that it has the necessary technical capacity, including internet access, to use the Instrument.

5. Disclaimer

5.1 Suitability of Services

To the maximum extent permitted by Law, the Client acknowledges and agrees that:

- (a) Serendis does not warrant or guarantee any outcomes, or the suitability of the Instrument for any purpose;
- (b) any advice or information provided by Serendis in connection with the Instrument is not to be taken as medical, psychological, recruitment, business, or any other advice. All materials are for entertainment, information or training purposes only.
- (c) Serendis will use reasonable endeavours to ensure that the Instrument is virus and error free. However, Serendis does not warrant that the Instrument will be virus or error-free or uninterrupted. The Instrument and its content are delivered on an "as-is" and "as-available" basis. Serendis cannot ensure that files the Client accesses or downloads from the Instrument will be free of viruses or contamination or destructive features. Receipt of emails, or other Internet based communications such as via Facebook or Twitter from Serendis cannot be guaranteed. Low internet connection speeds and/or older operating systems and/or browsers may result in slower page load times and an inability to view content on the Instrument.
- (d) Exclusion of Liability

5.2 Indemnity

The Client will indemnify Serendis from and against any loss or damage, including personal injury, arising as a result of:

- (a) the implementation of any information provided by Serendis in connection with the Instrument;
- (b) any breach of these Terms and Conditions by the Client;
- (c) any negligence of the Client.

5.3 Releases

The Client acknowledges and agrees that Serendis is not liable for, and the Client releases Serendis from any Claims relating to:

- (a) any failure, error, omission or interruptions in the availability or quality of the internet, telecommunications systems or other technology during the provision of the Instrument;
- (b) any interference, loss or damage to any data, computer system, mobile device or any other property arising as a result of or in connection with the provision of the Instrument; or
- (c) any reliance on any information, document, advice or other materials provided by Serendis on or in connection with the Instrument or the Coaching Session.

5.4 Exclusion of liability

To the maximum extent permitted by Law and subject to clause 6:

- (a) Serendis will not be liable for, and the Client waives any right it has to claim, any loss of income, loss of profit, production, contract, customers, goodwill, opportunity or business, or any indirect, special or consequential loss or damage of any nature whatsoever arising under or in connection with the Instrument, or these Terms and Conditions, whether in contract, tort (including negligence), under statute, in equity or otherwise; and

- (b) Serendis's aggregate liability to the Client arising out of, or in connection with, the Instrument is capped at an amount equivalent to the Fee.

6. Australian Consumer Law

- (a) Nothing in these Terms and Conditions, except as expressed otherwise in clause 6(b), will be construed as excluding, restricting or modifying any Consumer Guarantee. The Client is entitled to a resupply of the Instrument or a refund in the event of a Major Failure of the Instrument.
- (b) In the event of a Minor Failure Serendis's liability to comply with a Consumer Guarantee is limited, at the sole discretion of Serendis, to supplying the service again or payment of the costs of having the service supplied again.

7. Intellectual Property and Privacy

7.1 Intellectual Property

- (a) The Client acknowledges and agrees that Serendis owns all Intellectual Property in the Instrument, including but not limited to:
 - (i) the nine-dimensional inclusive leadership behaviour testing model;
 - (ii) the questions and other written content within the Instrument; and
 - (iii) any images, graphics, or drawings within the Instrument.
- (b) The Client acknowledges and agrees that Serendis will retain ownership of all Intellectual Property created as a result of or in connection with the Instrument, and all Intellectual Property within or created for the Instrument.
- (c) To the extent that the Client becomes the owner of any Intellectual Property created in connection with the Instrument, the Client grants to Serendis an exclusive, transferable, royalty-

free licence to use that Intellectual Property in relation to the Instrument.

which is unlawful, illegal, fraudulent or harmful, or in connection with any unlawful, illegal, fraudulent or harmful purpose or activity.

7.2 Privacy and data

- (a) Subject to the terms of the Privacy Policy, Serendis will only collect personal information from the Client for the purpose of:
- (i) providing the Instrument;
 - (ii) analysing data generated by the Instrument;
 - (iii) conducting research and/or studies relating to the Instrument;
 - (iv) to the extent permitted by law, notifying the Client of other services provided by Serendis and other parties which may be of interest to the Client (subject to the Client's right to opt out of such communications); or
 - (v) providing information to the Client which Serendis believes may be useful or relevant to the Client having regard to the Client's interest in the Instrument.
- (b) The Client gives Serendis permission to collect and store any personal details and other information provided by the Client in connection with the Instrument, in accordance with the Privacy Policy.

- (c) The Client must not use the Instrument to copy, store, host, transmit, send, use, publish or distribute any material which consists of (or is linked to) any spyware, computer virus, Trojan horse, worm, keystroke logger, rootkit or other malicious computer software.
- (d) The Client must not conduct any systematic or automated data collection activities (including, without limitation, scraping, data mining, data extraction and data harvesting) on or in relation to the Instrument without the express written consent of Serendis.

9. Termination

Serendis may terminate these Terms and Conditions with or without cause at any time and effective immediately. Upon receipt of a notice of termination from Serendis, the Client must destroy all materials obtained from the Instrument or via the Website and any copies thereof.

10. Access Restriction

Without prejudice to our other rights under these terms of use, if the Client breach these terms of use in any way, Serendis may take such action as Serendis deems appropriate to deal with the breach, including but not limited to suspending the Client's access to the Instrument or Website and prohibiting the Client from accessing the Instrument or Website.

11. Confidential Information

A Recipient must not use or disclose the Discloser's Confidential Information unless:

- (a) The Client acknowledges that the access code is personal to the Client, and agrees not to share, allow others to use, disclose or publicise the access code.
- (b) The Client must not use the Instrument in any way that causes, or may cause, damage to the Instrument or impairment of the availability or accessibility of the Instrument; or in any way
- (a) the Discloser gives its written consent to disclosure or use of the information;
 - (b) the use or disclosure is required by law; or
 - (c) the use or disclosure is required for the purpose of performing Instrument.

12. General

12.1 Severability

Should any part these Terms and Conditions be or become invalid, that part shall be severed from this agreement. Such invalidity shall not affect the validity of the remaining provisions of the agreement.

12.2 Waiver

No forbearance, delay or indulgence by a party in enforcing the provisions of this agreement shall prejudice or restrict the rights of that party, nor shall any waiver of those rights operate as a waiver of any subsequent breach.

13. Definitions

13.1 Definitions

- (a) **ACL** means the Australian Consumer Law contained in Schedule 2 of the *Competition and Consumer Act 2010* (Cth).
- (b) **Business Day** means a day which is not a Saturday, Sunday, public or bank holiday in Sydney, New South Wales.
- (c) **Claim** includes any allegation, action, demand, cause of action, suit or proceeding, howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at Law, in equity, under statute or otherwise.
- (d) **Client** means the person who uses the Instrument.
- (e) **Coaching Session** means a feedback session for the purposes of discussing and implementing the results of the Instrument. The Coaching Session may be delivered by way of a face-to-face individual or group session, or over the phone. The manner of delivery of the Coaching Session will be determined by Serendis in its absolute discretion and in accordance with the Client or Organisation's needs.
- (f) **Confidential Information** means information provided by or on behalf of a Party (**Discloser**) to

the other Party or any of its representatives (**Recipient**) in relation to the Instrument and which:

- (i) is communicated by the Discloser as being confidential;
- (ii) is by its nature, confidential;
- (iii) relates to the business affairs or operating processes of the Discloser; or
- (iv) the Recipient knows or ought to know is confidential,

but does not include information which:

- (v) is already known by the Recipient without breach of any obligation of confidentiality; or
- (vi) is in or becomes in the public domain other than through a breach of these Terms and Conditions by the Recipient.
- (g) **Consumer** means a customer that is a consumer, as that term is defined in the ACL, in respect of the particular supply of the Instrument.
- (h) **Consumer Guarantee** means a guarantee relating to the supply of goods or services to Consumers provided by Division 1 of Part 3-2 of the ACL.
- (i) **Fee** means the fee payable by the Organisation for the Instrument, payable in accordance with the Payment Terms.
- (j) **Intellectual Property** means trade marks, trade names, domain names, logos, get-up, patents, inventions, registered and unregistered design rights, copyrights, circuit layout rights, and all similar rights in any part of the world (including know-how) including, where such rights are

obtained or enhanced by registration, any registration of such rights and applications and rights to apply for such registrations.

State and the Commonwealth of Australia in respect of all matters or things arising out of these Terms and Conditions.

- (k) **Instrument** means the Serendis Inclusive Leadership Discovery Instrument which is provided in two parts:
- (i) the completion of the Inclusion360 online survey by the Client; and
 - (ii) The follow up Coaching Session.
- (l) **Law** means any law, regulation, authorisation, ruling, judgment, order or decree of any government agency and any statute, regulation, proclamation, ordinance or by-law.
- (m) **Major Failure** has the meaning given to it by the Australian Consumer Law.
- (n) **Minor Failure** has the meaning given to it by the Australian Consumer Law.
- (o) **Organisation** means the employer or organisation with which the Client is associated.
- (p) **Payment Terms** means Serendis' terms of payment as provided to the Organisation at the time of its agreement to purchase the Instrument, as amended by Serendis from time to time.
- (q) **Privacy Policy** means Serendis's privacy policy published on the Website, as amended from time to time.
- (r) **Serendis** means Serendis Pty Ltd ACN 113 024 383.
- (s) **Website** means <https://www.serendis.com.au>

13.2 Governing Law

These Terms and Conditions are governed by and must be construed in accordance with the Laws of the State of New South Wales. The parties submit to the non-exclusive jurisdiction of the Courts of that